DOCUMENT RESUME

ED 203 660 FL 012 283

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TITLE The Development of Criteria for Student Participation in Bilingual Education: Federal, State, and Local Roles.
SPONS AGENCY National Inst. of Education (ED), Washington, D.C.
PUB DATE Dec 80
GRANT NIE-G-79-0164
NOTE 59p.

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Bilingual Education: Bilingual Students: Civil Rights: Criteria: *Educational Policy: Elementary Education: English (Second Language): Federal Legislation: Interviews: Language Maintenance: Language Proficiency: *Program Administration: School Districts: State Programs: *Student Participation: Testing
IDENTIFIERS *Bilingual Programs: California: Elementary Secondary Education Act Title VII: Lau Remedies 1975: Limited English Speaking: Texas

ABSTRACT

The determination of who shall receive bilingual education services is distributed among the federal, state, and local policy levels. This study explores how each level exercises that discretion. It examines targeting, identification, and assessment criteria set forth in federal and state legislation, and how a limited number of local districts implement the legislated mandates. The discussion focuses on the following: (1) the major federal criteria for student participation in bilingual education programs which are contained in the 1975 Lau Remedies and in Title VII of the Elementary and Secondary Education Act: (2) an investigation of the mandatory bilingual education programs in Texas and California, with emphasis on targeting requirements, identification and language assessment procedures, and the variation among school districts in implementing the mandates: and (3) interviews with local school district administrators, principals, and teachers in Texas and California, which revealed great variability in program. Questions regarding civil rights protections for language minority children are raised in a concluding section. Attachments include a list of districts where interviews were conducted, and appendices containing examples of home surveys used, the Lau Categories of Language groups, and a memo listing Texas approved language assessment instruments. (Author/AMH)

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THE DEVELOPMENT OF CRITERIA FOR STUDENT PARTICIPATION IN BILINGUAL EDUCATION: FEDERAL, STATE, AND LOCAL ROLES

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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December 1980

This research was supported by NIE Grant No. NIE-G-79-0164.

FL 012 283

Abstract

The Development of Criteria for Student Participation in Bilingual Education: Federal, State, and Local Roles

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December 1980

The major federal criteria for student participation in bilingual education programs are contained in the 1975 Lau Remedies and in Title VII of the Elementary and Secondary Education Act. The Lau Remedies provide civil rights protection to language minority students. Programs are mandated for students when 20 children of the same primary language group are identified in a school district. Title VII, unlike the universally mandatory Lau civil rights protection, is a voluntary, competetive grant program which rewards local districts that provide certain kinds of bilingual education programs. Title VII does not stipulate targeting criteria, other than that the students in greatest need shall be served first. The 1978 reauthorization of ESEA, however, also provides for a maximum of 40% of children "whose language is English" in bilingual education programs. These apparently contradictory targeting criteria provide considerable local discretion in the determination of which students may participate in bilingual education programs.

California and Texas both have mandatory state bilingual education programs, with very different targeting requirements. California's program serves children in grades K-12, in 16 languages, and includes approximately 1/3 fluent English children in each bilingual class. Bilingual programs are mandated when 10 children of the same language in one grade are identified as LES/NES. Texas' program is mandatory only from K-3, with an optional continuation to grades 4 and 5. It serves Spanish-speaking children almost exclusively (there is one non-Spanish program in the state), and does not mandate inclusion of English-proficient children. It is targeted when 20 LES/NES children are identified in the same grade.

In spite of having such different targeting requirements, the California and Texas state programs have very similar identification and language assessment procedures - a home language survey, followed by administration of a state-recommended language assessment instrument.

There is considerable local discretion in the scoring of the language assessment instruments, which may result in variability in student identification, depending on district sophistication in use of the instruments, and district philosophy about bilingual education.

Student identification and assessment may be a function of district commitment to bilingual education and capacity to provide quality instructional programs. If districts are uncommitted and lack resources to implement quality programs, their assessment procedures may be less rigorous than districts which are genuinely committed to bilingual education.

While targeting criteria are circimscribed in federal and state legislative mandates, and identification and assessment procedures in regulations and state department of education policy in California and Texas, near total local discretion exists in the determination of educational programs for LES/NES students. It is at the local program level that greatest variability is found. Less variation exists in Texas, which has a clearly articulated state curriculum policy for bilingual education, than in California, which serves many more language groups, and includes FES students in bilingual education programs.

Civil rights protections for language minority children embodied in Lau and the California state bilingual education program mandate clear targeting, identification, and assessment procedures. These federal and state protections stop short of guaranteeing equal opportunity for LES/NES children because they fail to address a key issue in the determination of program quality - the language curriculum. Perhaps the time has come to focus attention to the curriculum of educational programs for LES/NES students now that the early problems of identification and assessment have been dealt with.

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The Development of Criteria for Student Participation in Bilingual Education: Federal, State, and Local Roles

Iris Polk Berke

Introduction

The determination of who shall receive bilingual education services is distributed among the federal, state, and local policy levels. This study explores how each level exercises that discretion. The study examines targeting, identification, and assessment criteria set forth in federal and state legislation, and how a limited number of local districts implement the legislated mandates.

The study cites federal student participation criteria set forth in ESEA Title VII and the Lau Remedies. It then examines bilingual education legislation in California and Texas. In order to see how federal and state mandates to target, identify, and assess students are implemented, local school district administrators, principals and teachers were interviewed in both states.[1]

The study raises concerns about the relation between civil rights protection of language minority students and the educational responses to broad mandates to "serve." The examination of the federal, state, and local roles in determining who shall receive bilingual education services has important implications for the nature of the services provided.

The Federal Role: ESEA Title VII and Lau Remedies

Put simply, the federal role is to insure that children who do not speak or understand English receive special help.

> There is little question that non-English-speaking students areto be served by bilingual programs. Furthermore, these subjects are generally easily identified. However, with respect to students who speak English, at least to some extent, the criterion for program eligibility is more difficult to establish and assess. It has ranged from English-sepaking students who are 'culturally different' to the requirement that students perform below a certain percentile on a standardized

> English language test. Many terms are presently in use in reference to these students, including 'limited-English speaking students, non-English dominant students, linguistically and culturally different students, students whose primary language is other than English (Irizarry, 8).'

The first federal bilingual education program, Title VII of the 1968 Elementary and Secondary Education Act (PL90-247), authorized a limited competetive grant program. It was intended to provide seed money to local districts which would develop demonstration programs which would then be disseminated throughout the country. The act adopted a common sense definition of children to be served:

> For the purposes of this title, 'children of limited English-speaking ability' means children who come from environments where the dominant language is other than English (Sec. 702).

It also stipulated that they had to be poor, with family incomes below $3,000 per year, or receiving aid to families with dependent children (Sec. 704(a)).

The 1974 reauthorization of ESEA Title VII (PL 93-380) expanded the definition of "limited English-speaking ability" to mean:

> (A) individuals who were not born in the United States or whose native language is a language other than English and
>
> (B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulations:
>
> and by reason thereof having difficulty speaking and understanding instructions in the English language (Sec. 703(a)(1)).

The 1974 act also provided for the voluntary enrollment of children "whose language is English" so they might learn about the cultures of the limited English-speaking children. The act noted that priority in determining eligibility should go to the limited English-speaking children, but set no relative proportions of limited to English-speaking children (Sec. 703 (4)(B)).

The complexity of targeting and identification were becoming apparent, as evidenced by the expanded definitions of "limited English-speaking

ability" and the directive to the Commissioner of Education to develop regulations further refining eligibility criteria. The Supreme Court ruling in Lau v. Nichol (discussed below) would further complicate the Title VII Program eligibility criteria.

The 1978 reauthorization of ESEA Title VII (PL 95-561) simultaneously mandated that the children most in need of services be targeted (Sec. 702 (a)(7)(B)) and increased the allowable percentage of "children whose language is English" to 40% per program (Sec. 703 (4)(B)). These apparently contradictory stipulations clearly leave considerable leeway to state and local levels regarding student participation criteria.

Recognizing that language encompasses skills other than speaking, the 1978 reauthorization of ESEA Title VII changed the term "limited English-speaking ability" to "limited English proficiency" (Sec. 703 (1)) and included American Indians and Alaskan Native students as eligible.

While the act does not set forth criteria for student participation other than those mentioned above, it orders the Secretary (of the Department of Health, Education, and Welfare) to develop, by Sept. 30, 1980,

> methods for identifying children of limited English proficiency who are in need of bilingual education programs (Sec. 731 (e)(2)),

and to undertake research

> to determine the most effective and reliable methods of identification of students who should be entitled to services under this title (Sec. 742 (b)(4)).[2]

The clear implication is that, depending on the results of the research mandated in the act, by the next reauthorization in 1983, the federal role in determining eligibility criteria may be expanded. As long as ESEA Title VII remains a voluntary, competetive program, whatever criteria it sets forth will have limited impact. Districts which cannot meet the stipulated criteria, or choose not to, do not have to apply for funds under this act. If, however, Title VII becomes an entitlement or otherwise attains greater mandatory stature, its directives on targeting, identification, assessment, and proportion of fluent to limited English-proficient children will affect state and local policy discretion in these areas.

Lau Remedies

A rather different federal support for bilingual education than ESEA Title VII was the 1974 Supreme Court ruling in Lau v. Nichols. The plaintiffs in this case, 1800 Chinese students in San Francisco, claimed that the lack of programs for children who did not understand English violated both Title VII of the 1964 Civil Rights Act (which forbids discrimination based on national origin) and the equal protection clause of the Fourteenth Amendment.

The Supreme Court ruled that the children were denied equal protection because

> ...there is no equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education (Lau v. Nichols, 94S.Ct. 786).

Following the Lau ruling, in the summer of 1975 HEW's Office of Civil Rights issued informal guidelines called the "Lau Remedies." While they did not mandate bilingual education, they rejected the sole use of ESL for limited English-proficiency elementary students.

> The import of Lau was enormous. The Bilingual Education Act had already given federal validation to the voluntary use of native languages in the classroom. Now, for the first time, language rights were recognized as a civil right. Federally aided schools were henceforth legally obligated to provide special assistance to students with limited English-speaking ability in overcoming their language difficulties. Furthermore, schools were told that children must not be denied full participation in the educational process while they were learning English. The Court left it to the States and the educators how this should be done, but...left the way open for federal determination of what 'affirmative steps' were acceptable under Title VI (Pifer, 7).

As Pifer maintains, "This was tantamount to requiring that bilingual education programs be established, with ESL as a component, unless the schools could produce an equally acceptable alternative (p. 7)." Lau and subsequent OCR enforcement spurred the passage of many state bilingual education laws, and overturned the prohibition against using languages other than English for instruction which had been in effect in many states since World War I.

Because it seeks to protect the civil rights of language minority students, the Lau ruling and the Remedies in effect since 1975 have greatly affected criteria for student identification, assessment, and service. OCR developed a five-level categorization of students' language proficience:

A. Monolingual speaker of language other than English

B. Predominantly speaks the language other than English

C. Bilingual

D. Predominantly speaks English

E. Monolingual speaker of English (De Avila and Duncan, 4).

The Lau remedies mandate that districts must state the methods by which they identify students' primary language. The remedies do not specify assessment methods, but do stipulate that home language must be determined "by persons who can speak and understand the necessary language(s)."

To determine which category a student falls into (A-E), the remedies suggest that districts determine the language most often spoken in the student's home, spoken by the student at home, and spoken by the student in a social setting. On the basis of this language assessment and assessment of the student's basic skills, each student will have an appropriate educational program prescribed (BABEL Lau Compliance Handbook).

Clearly the Lau Remedies prescribe certain steps in the identification and assessment of students to receive bilingual education services that must be carried out by states and local districts. The Lau ruling provides no funds; it is a minimal civil rights protection to insure that language minority students receive equal educational opportunity and are not discriminated against. Some states and local districts do more than is required by Lau; others do considerably less.

While other programs and funding sources provide various services to bilingual students, ESEA Title VII and Lau are the two main federal efforts. They are very different in intent. Title VII is a voluntary, competetive grant program which establishes certain guidelines within which local districts are encouraged to develop programs of their own design. Such programs are supplementary to whatever state and federal requirements exist to serve bilingual students. Title VII allows considerable discretion in determination of whom to serve and how.

Lau, on the other hand, is universally mandatory. The Remedies are quite prescriptive. There is a powerful enforcement mechanism. Districts found out of compliance with Lau face immediate withholding of their ESAA funds, and subsequent withholding of ALL their federal funds if they do not show good faith attempts to come into compliance in a reasonable length of time. While funds for ESEA Title VII help districts implement innovative programs, the amounts are usually small, certainly when compared to the total amount of federal funds in a district which might be withheld if the district is out of Lau compliance. Although there is hardly universal compliance with the Lau Remedies' identification and assessment procedures, they have been a powerful force to get states and local districts to establish such mechanisms and follow up identification of limited English students with at least some educational services.

The interactions of these two federal mandates with each other and with state and local criteria for student participation in bilingual education programs do not lend themselves to neat analysis. The jurisdictions are not completely clear-cut or separate. Title VII is usually seen as "supporting" Lau, or providing supplementary funding to improve bilingual education required by Lau. However, this is not always the case. The situation becomes even more complex when we attempt to determine state and local roles regarding student participation criteria. The organizational chart below, developed by researchers at Stanford University's Institute for Research on Educational Finance and Governance aptly characterizes the interwoven and tangled federal, state, and local roles for this (and other) governance issues.

(IFG Policy Notes, I:3, p. 1)

While the diagram is messy and tangled, it represents what are probably conscious policy preferences among the federal, state, and local levels. This is as true for bilingual education as for many other policy areas. The confusion allows each level a degree of policy control and discretion which is (more or less) acceptable to the other levels.

> The conflicts and antagonisms arising among local, state, and federal educational agencies often arise from disagreements concerning the growing body of state and federal laws and regulations aimed at protecting the rights of minority students and ensuring equal educational opportunities. If these laws and regulations are detailed, precise, and mandatory, they are frequently criticized by some school officials as usurping local education authority -- substituting the judgment of legislators, bureaucrats, and lawyers for that of educators, and unnecessarily straitjacketing a school system's freedom to innovate and individualize. If, on the other hand, these laws and regulations are flexible, broad, and permissive, local school officials often are heard to criticize them as vague, ambiguous, confusing, and providing little guidance. All of this has been no less true where the rights of limited-English-speaking students are concerned (Cal. SDE with Hiller, 102).

Ironically, Lau is both prescriptive and permissive regarding targeting, identification, language assessment, and educational remedies to be carried out at the local level. It is quite explicit that language minority children's civil rights must be protected, that they cannot be denied equal opportunity for education nor discriminated against. How they are identified, assessed, grouped, and educated, however, is within the realm of the state and local levels.

The State Role: California and Texas

California and Texas were chosen for state level analysis because of certain similarities and differences. Both states have mandatory state bilingual education programs supported by state funds. In 1975-6, California enrolled 133,000 students in state bilingual education programs at a cost of $9 million. In the same year, Texas enrolled 114,000 students at a cost of $6 million (A Study of State Programs in Bilingual Education, p. 31). Both states have large Spanish-speaking populations

and continuous migration into the states.

There are, however, considerable differences in social climate. While it experiences continuous in-migration, Texas' general population, including Hispanics,is quite stable. In many communities, three and four generations live in the same town, and can trace their ancestry back several hundred years. California has a much more transient population. Texas is a "right to work" state: California is a strong union state with collective bargaining for teachers. In Texas, bilingual education is targeted almost exclusively on Spanish speakers. There is only one bilingual education program in another language, a Vietnamese/ English program in Port Arthur (Tipton interview, 10/27/80). California, on the other hand has bilingual education programs in 16 languages other than Spanish (Chinese, Korean, Tagalog, Mandarin, Portuguese, Cantonese, Japanese, Vietnamese, Pilipino, Armenian, Laotian, Cambodian, Fijian, Punjabi, Hindi, and Ilocano), with training programs in Palauan and Yapese (Directory, State of California Title VII Bilingual Education Programs, 1979-80).

These factors and others undoubtedly influence the development of state bilingual education policy, the implementation of federal mandates, and the exertion of local discretion. The state role in determining student participation criteria for bilingual education will be explored in the influence of legislation, state department of education, and educational "programs" in California and Texas.

The State Legislature

California has a very active, full-time, well-staffed, highly paid legislature. It inolves itself in all aspects of life in the state from irrigation to teacher licensing requirements. The legislature has waged spirited battles over bilingual education in recent years (see Eric Brazil's "The Political Mayhem over Bilingual Education"). Assemblyman Peter Chacon (D-San Diego), known as the father of bilingual education in the state, has been the prime advocate of bilingual education legislation.

Since the first act in 1971, California's bilingual education legislation has undergone many revisions. The 1972 act, AB 2284 (Chapter 1258/72) was similar to ESEA Title VII in that it was a voluntary competetive grant program for which districts had to apply (Tempes, 11/12/80). It required districts to undertake a census of limited and non-English-speaking children and to report the results to the Department of Education (Pirillo, 117).

The Chacon-Moscone Bilingual Bicultural Education Act of 1976 (AB 1329) was California's response to Lau. It was a formula entitlement (Tempes, 11/12/80) which required a two-step census to identify eligible students. The first step is a home language survey (see Appendix A) to identify students' primary language. If students have a primary language other than English, their language proficiency will be assessed to determine whether they are fluent, limited, or non-English proficient (Dulay and Burt, 12 and Pirillo, 118).

The Act also stipulated that a ratio of 2/3 LES/NES students to 1/3 FES (fluent English-speaking) students be maintained in classes, unless the proportion of LES/NES students in a school exceeds 2/3, in which case the proportion of LES/NES students in a class may exceed their proportion in the school by up to ten percent (Education Code Section 52167).

This bill exceeded Lau's requirements in some respects. Lau requires bilingual education programs to be developed when 20 or more students of the same language group are present in a district. AB 1329 required state programs when there were 10 or more students of the same language group at a grade level. The different concentrations for targeting programs between Lau and California's AB 1329 have clear implications for the types of educational programs to be offered, particularly as AB 1329 requires teachers fluent in the primary language and holding a bilingual credential or waiver.

AB 1329 was superseded by AB 65 (Chapter 894/77), a comprehensive finance and school reform effort. This bill primarily affected the funding of bilingual education, incorporating it into a complex economic impact aid formula. It had no effect on targeting or identification of bilingual education students, but required school districts to adopt proficiency standards in basic skills, an area that clearly affects language minority students.

California's most recent bilingual education legialation, AB 507 (Chapter 1339/80), elaborates census and language assessment procedures. The act requires the Superintendent (see section below on California State Department of Education) to prescribe census-taking methods which include: (a) determination of each pupil's primary language, (b) an assessment of the language skills of all pupils whose primary language is other than English, and (c) for those students identified as being of limited English proficiency, a further assessment to determine the pupil's primary language proficiency, including speaking, reading, comprehension, and writing, to the extent that assessment instruments are available (Education Code Section 52164.1).

The act leaves no stone unturned in the identification and assessment process. Even if initial assessment shows that a pupil "has no proficiency in the primary language," additional assessment must be undertaken to cross-validate the original assessment results.

> If the assessment conducted pursuant to this subdivision indicates that the pupil has no proficiency in the primary language, further assessment of the pupil's primary language skills including consultation with the pupil's parents or guardians, the classroom teacher, the pupil, or others who are familiar with the pupil's language ability in various environments shall be conducted. If this detailed assessment indicates that the pupil has no proficiency in his or her primary language, then the pupil is not entitled to the protection of this article (Education Code Section 52164.1 (c)).

The act also authorizes the Department of Education to audit the census of any district whose results appear to be inaccurate or where a formal written complaint has been filed (Section 52164.2).

Clearly the California legislature assumes a high degree of state authority regarding the targeting, identification, and assessment of students to participate in bilingual education programs. AB 507 also prescribes recommended program components and a multitude of other aspects of importance to the establishment and implementation of bilingual education programs. If only the state's capacity to monitor and enforce the legislation equalled the legislators' good intentions! And if only the mandated procedures weren't so costly and time-consuming!

Texas has a much simpler legislative history than California. Although it has a very impressive Capitol (second in size only to the U.S. Capitol in Washington,D.C.), it has a part-time legislature which meets for sixty days every two years. Following pressure from OCR, Texas passed its bilingual education legislation, SB 121, in 1973. It has not changed since.

The act mandates a "compensatory program of bilingual education" for children in grades K-3 when a district has 20 or more limited-English speaking children per language per grade. The program is optional for grades 4 and 5. Beyond grade 5, bilingual education is conducted at local district expense.[3] The act requires each school district, "under regulations prescribed by the State Board of Education" to identify limited-English-speaking children (Texas Education Code, Section 1, Chapter 21).

Powerful opponents of bilingual education have hamstrung legislative efforts to expand bilingual education services in Texas. The compromises needed to include bilingual education services to Kindergarten resulted in reducing the mandated bilingual education program from sixth down to third grade. Texas Senator Truan detailed the influence of House Speaker Billy Clayton

> who had, in fact, introduced legislation either in 1971 or 1973 that would have provided for certain punishment, certain fines for anybody teaching bilingual education, and he became Speaker, and so it was very hard to add kindergarten to the existing law without compromising or reducing the mandatory provision from the sixth to the third grade, and Speaker Clayton is the presiding officer over the House of Representatives, and he appoints the committees, and he is a very powerful State official, and we have not made any progress in [bilingual education] legislation since 1975 when we had to reduce the mandatory provision (Defendants' Proposed Opinion, USA,MALDEF, LULAC, and GI Forum vs. State of Texas, 16).

Since that ill-fated attempt to expand services, the legislature has kept pretty much out of bilingual education. Most bilingual education policy in Texas is made by the Texas Education Agency, interest groups, and school boards associations (Tipton, 10/27/80). The State Board of Education keeps watch on the TEA's Division of Bilingual Education. It rejected TEA's recommendationsto make services mandatory in grades 4 and 5 and to include language on identification and language assessment of limited English-proficiency children in school accreditation standards in 1978.(Plaintiff-Intervenors' Post Trial Memorandum, USA, et. al vs. State of Texas, 33-35).

> The State Board also determines what resources are available to the various operating divisions of the T.E.A. There too the Board has continually hamstrung the agency's Division of Bilingual Education by limiting its budget for staff and operating expenses (ibid., 36-37).

Thus, clearly the legislature and the State Board of Education keep a tight lid on services to limited and non-English speaking children in Texas. Limited quantity of service, however, does not imply that the quality of service in inadequate. As will be discussed below, the quality of services offered in many areas is commendable. The relationship between civil rights protection and adequacy of educational treatment for language minority children bears investigation.

The State Department of Education

The California State Department of Education Office of Bilingual Bicultural Education is staffed by approximately 15 professionals who administer the various aspects of bilingual education in the state, provide technical assistance, monitor and evaluate programs. Most of the Office's funding comes from ESEA Title VII, for which this office has a clear mandate. The Office also administers the California State Bilingual Education Program and services provided to children under state legislation (see above). With respect to the state bilingual education program, however, the Office shares jurisdiction with other units of the State Department of Education. The OBBE would prefer a clearer mandate to administer both state and federal bilingual education programs. Although the OBBE has influenced recent state bilingual education legislation, it would have preferred even greater influence. It also resents the "duplication of services" and conflicting allegiances of the four federally-funded Title VII Bilingual Education Service Centers (BESCs) in the state (Lopez/Cervantes, 3/4/80).

The Texas Education Agency Division of Bilingual Education is staffed by one-half as many professionals as the California unit, although the number of children served is nearly identical. Texas relies less heavily on Title VII funding than does California. The prevailing attitude throughout the state is that the strings attached to federal money are not worth the trouble. The TEA Division of Bilingual Education's primary function is program monitoring, done once every three years for each program in the state. The TEA does not provide technical assistance: that is done by the 20 Regional Education Service Cetners throughout the state. This division of function between the TEA and the Regional Service Centers avoids one of California's vexing problems - having the same people from a state agency cstensibly "help improve educational programs" while they simultaneously make decisions regarding program quality which can then influence funding level or competetive ranking.

Unlike the California State Department of Education, the Texas Education Agency has been known to underspend funds allocated to it. The plaintiffs in United States of America, et al. vs. State of Texas allege that in 1976-77 the TEA failed to spend $1.6 million of the amount it had requested from the legislature for bilingual education.

> T.E.A.'s failure to use all of the funds allocated contributed to the legislature's reduction of later bilingual appropriations since such underspending was seen as 'very unusual.' (USA v. Texas, Plaintiff-Inter., 38)

The TEA's response is that the State Board of Education keeps it understaffed and underfunded (ibid, 36-37). In spite of being understaffed and underfunded, the TEA Division of Bilingual Education exerts considerable policy discretion. Although the state's major bilingual education policy has been circumscribed in the 1973 legislation, the TEA further articulated state bilingual education policy in three documents:

1) The Texas State Plan for Bilingual Education,

2) Appendix C, Curriculum Framework for Language Arts Development for Bilingual Education Programs, K-5, and

3) Appendix D, Curriculum Framework for English Language Development, 6-12.

These documents state the goals, philosophy, curriculum, and procedures for the conduct of bilingual education in Texas. They prescribe a minimum program which every district in the state (that meets certain criteria) must implement. They delineate areas left to local discretion, and encourage local services to bilingual children, but leave no doubt about what the state requires at a minimum level of service. The contents of these documents is discussed below under "Targeting, Identification, and Assessment."

The California OBBE takes a more policy reactive role than the TEA Division of Bilingual Education. Due to a more active state legislature, continually changing state bilingual education legislation, the broader scope of its legislation, and the heterogeneity of the language groups served, the California OBBE continually develops, refines, and changes its directives to local districts regarding the many aspects of state and federal bilingual education legislation. In Texas, state bilingual education policy can be determined by reading the brief statute, statement of board policy, and three TEA documents (the Texas State Plan for Bilingual Education, and Appendices C and D). To get a handle on bilingual education policy in California, one must sift through several legislative reauhtorizations, OBBE policy statements intended to educate the rest of the State Department of Education, and numerous directives to local districts regarding language census, assessment, Program Quality Review, teacher certification, and so on - only to conclude that bilingual education policy in California is in a state of perpetual flux.

In spite of its reactive position within the state, the California OBBE sees itself as a leader in the nation. It asserts that California has already begun solutions to problems that Washington is just be-

beginning to think about. It claims to be at least six months ahead of the federal Office of Bilingual Education and Minority Language Affairs in language assessment procedures (Lopez/Cervantes, 3/4/80). These procedures will be discussed in detail below.

Targeting, Identification, and Assessment

The Lau Remedies target services on children from kindergarten through twelfth grade who fall into categories D and E of the five-level categorization (see above, p. 5). Special programs must be established when the concentration of such children is 20 of the same language in a district; when there are fewer than 20, children identified as limited- or non-English proficient must be provided with individual learning plans.

The California State Bilingual Education Program targets services on all children from kindergarten through twelfth grade who are identified as limited or non-English speaking. When 10 children of the same primary language are in the same grade at a school, a special program must be established for them. The program ideally should be composed of 2/3 LES/NES students and 1/3 FES (fluent English-speaking) students. When the concentration of 10 children per language in a grade is not met, children identified as LES or NES must be provided with a bilingual individual learning plan.

The Texas State Bilingual Education Plan targets services on children from kindergarter through third grade, with an option to continue services in fourth and fifth grades, who are identified as limited or non-English speaking. When there are 2o children of the same language in a grade, a bilingual education program must be provided. When there are fewer, or beyond fifth grade (unless the local district choses to provide bilingual education services), children identified as LES or NES must be provided with an English Language Development Program.

	Concentration	Duration	FES students
Lau	20/lang./district	K-12	optional
California	10/lang./grade	K-12	1/3
Texas	20/lang./grade	K-3, optional 4 and 5	optional (receive no funding)

Table 1. Targeting criteria for Lau, California, and Texas State Bilingual Education Programs.

The issue of targeting is vitally important. Determination of who shall receive services, for what length of time, and under what circumstances clearly affects the nature and scope of services provided. The great disparity among required concentrations for bilingual education services among the Lau Remedies, the California and the Texas State Bilingual Education Programs leaves considerable discretion to state and local education agencies to select how to target services. The shape of a Lau "program" which serves 20 children scattered across a district spanning grades K-12 will obviously be quite different from a Texas bilingual education program serving 20 children in one class. California's inclusion of 1/3 FES students in bilingual education programs circumscribes quite different educational treatments. While federal and state legislation set broad targeting criteria, these leave considerable leeway to local districts in designing their bilingual education programs. This is discussed in greater detail below under "The Local Role."

The identification of students to be served has become more uniform and sophisticat as educators, linguists, and psychologists have grappled with the problem. In the early days of bilingual education, children to be served were usually identified by teacher recommendation. Teachers employed common sense criteria, often "eyeballing" children into categories depending on their surname, skin color, and language use. As the state of the art advanced and people began to recognize the inadequacy of such identification methods, determination of language dominance became the identification criterion. Dominance, too, had its problems. Psycholinguists pointed out that children might be dominant in one language in certain domains (home, play), but dominant in another language in other domains (school, formal situations); that children might be dominant in one language but hardly proficient in it; and that children might be "balanced bilingual," but lacking full command of either language. (For more detailed discussion of the problems with language dominance as an identification criterion, see DeAvila and Duncan, "A Few Thoughts About Language Assessment," and Burt and Dulay, "Aspects of Bilingual Education for LES/NES Students.")

Current thinking is that language proficience is a more useful criterion than dominance for identifying students to receive bilingual education services. Identification has been broken down into two phases: a home language survey, and follow-up language proficiency assessment for students who report a primary language other than English on the home language survey. Both California and Texas require administration of a home language survey (see Appendices B and C) in English and the primary language (when feasible to translate). In Texas, the Home Language Survey must be administered on the first day of fall registration or when the student enters during the year (Texas State Plan

for Bilingual Education, p. 1). If parents respond that their child hears another language some or most of the time , understands some or most of what is said, and speaks the other language (TSPBE, 1 and 26), the child must be tested to determine his English language proficiency (within two weeks of fall registration or one week of entering during the school year).

California's procedures are very similar, but note that"the primary language of new pupils shall be determined as they enroll," (AB 507, Chapter 1339, Education Code Sec. 52164.1 (a)), in recognition of California's high student transiency. Follow-up language assessment must be completed within 90 days of initial enrollment(c).

Both the TEA and the California SDE have developed recommended criteria and assessment instruments to be used to determine students' language proficiency. Both states convened task forces to examine a variety of assessment instruments and come up with recommendations for local districts to use. Neither state is completely satisfied with existing instruments, but both recognize the practical need to do something resembling standardized language assessment using more valid methods than "eyeballing."

California recently shortened the list of recommended instruments to two, the Bilingual Syntax Measure (BSM) and the Language Assessment Scales (LAS), to increase the likelihood of standardization across the state (Report of the Language Census Instrument Review Committee). Some members of the State Department of Education would have liked to narrow the recommendations down to one instrument, but that was not politically feasible. In spite of the committee's selecting two instruments, districts which had been using others may continue doing so temporarily.

Texas currently recommends ten language assessment instruments, and specifies which grades each is to be used for, and what scores indicate that a student is to be identified LESA (see memo from Ernest Perez to the Administrator Addressed, Appendix D). Both states allow local districts to use assessment instruments other than those officially recommended, provided that written permission has been granted by the bilingual education office.

Although the targeting criteria vary widely among Lau, the Texas and the California State Bilingual Education Programs, the student identification and language assessment procedures promulgated by the state departments of education are very similar in process and content. This similarity at the state level invites further investigation

	TEXAS	CALIFORNIA
Grades served	K-3, optional 4 and 5	K-12
Concentration	20/language/grade	10/language/grade
State funding per child	$25 for materials	average of $150
Goal	transitional	transitional
Languages served	Spanish (except for 1 Vietnamese program	18 languages, predominantly Spanish
Identification procedures	Home language survey, followed by lang. assessment	Home language survey, followed by lang. assessment
Fluent English Proficient students	may enroll voluntarily, but receive no funding	1/3 required per class, unless not enough present
Classroom aides	not in state program, unless at district expense	used widely
# languages identified in state	65	85
# children served, 1979-80	117,000	

Table II. Comparison of Texas and California State Bilingual Education Programs: Key Elements.

at the local level to determine the degree of local discretion within each state and across the two states in implementation of state mandates on student targeting, identification, and language assessment.

The Local Role

There is little local discretion available with regard to targeting. As has been discussed above, targeting requirements are quite clear in federal and state bilingual education legislation. Where there is a disparity between federal and state requirements, the rule of "greatest prescription" holds. That is, whichever law, federal or state, is most prescriptive, must be followed. Texas claims that its law, which requires bilingual education programs only when there are 20 children of the same primary language in a grade (K-3), does not violate the Lau Remedies concentration of 20 students per district because children who are not grouped in large enough concentrations to warrant a "program" receive an English Language Development Program (Tipton, 10/27/80).

While targeting requirements for the non- and limited-English proficient children are quite clear, greater discretion exists in California for targeting the fluent English-proficient students. The California Administrative Codesection specifying educational services to the FES students recognizes the difficulty of too narrowly defining this population.

> The average performance level of fluent English-speaking participants in programs offered pursuant to subdivision (a), (b), or (c) of Education Code Section 52163 should, wherever possible, be at least at the average performance level of the respective grade of the program(s). (California Administrative Code, Title 5, Section 4306.)

For a variety of reasons, it is not always possible to obtain the ideal proportions of 2/3 LES/NES to 1/3 FES students who perform at the average for their grade. A study by the California Joint Legislative Audit Committee found that 75% of the FES pupils in bilingual education classrooms scored below the second quartile (50th. percent) in reading. The study, on a limited number of districts, indicated that the FES students in bilingual classes were representative (in achievement) of the FES population of the school (Implementation of Bilingual Education in California, 48-49). Clearly, local districts must include the FES students they have to work with.

In some districts, recruiting the desired proportion of FES children is a problem. Another study by the Joint Legislative Committee found that

> Eight of the 17 districts we visited indicated problems in meeting the statutory requirement that at least one-third of pupils in bilingual classes be fluent-English speaking. Some of the districts stated they had problems obtaining approval from parents of fluent-English speaking pupils to place the students in bilingual classes. Some parents felt that the program would hinder pupils' learning. Other districts had a substantial population of transient students, and the number of required fluent-English speaking pupils needed to maintain the one-third ratio was constantly changing (Bilingual Education: Pupil Assessment, Program Evaluation..., 32).

In other districts, however, particularly those with large language minority populations, recruiting FES students is no problem. A principal in the San Jose area reported that if parents of FES children want their children to attend the neighborhood school, they have no choice but to enroll them in bilingual classes. Having sufficient numbers to approach the desired ratio of 1/3 FES may be a problem, although not because they cannot be recruited. There just aren't large enough numbers to go around.[6]

The Home Language Survey is quite uniformly carried out in both California and Texas. There is little room for local discretion here. The process is easy to audit, and so straightforward that districts have little to gain by trying to avoid or misrepresent home language survey results.

Follow-up to the home language aurvey, however, is an area where considerable local discretion exists. While some local districts have been instrumental in advancing the state of the art of language assessment (San Diego developed an oral dominance measure which was widely used throughout California until 1977; El Paso developed an oral assessment instrument for grades K-3 and 4-6), there is still resistance by some districts to engage in the expensive,[7] time-consuming, and burdensome language assessment required for children who are designated as having a primary language other than English on a home language survey.

If a district has strong policy about which kinds of children will be served and how, that district may engage in only certain kinds of language assessment. A California district that was committed to

providing bilingual education for language groups that existed in sizable concentrations noted that it was reluctant to assess the language proficiency of children for whom they knew there would be little or no follow-up services.

> If he's the one little Greek-speaker in a school, why bother to go and find someone who can assess his Greek proficiency when we know that we cannot provide follow-up services by a Greek-speaking teacher? We assess in the languages that we will provide services in.

Districts follow their common sense about language assessment. In Texas, although initial language assessment is required in English, with follow-up in Spanish if the child cannot perform in English, a district bilingual coordinator noted that when a child is obviously Spanish-speaking, they do initial assessment in Spanish.

Districts in both California and Texas can select which language assessment instrument they will use (from a list of recommendations provided by each SDE). There is local discretion about who will administer the assessment, how they are scored, and how the results are reported. While most of the widely used assessment instruments (LAS, LAB, BINL, BSM, OLDM) come with directions about administration and scoring, they are largely oral assessments which leave room for subjectivity in scoring.[8] There may be wide inter-rater variability. There is also considerable variation among the assessment instruments, and use of one versus another may greatly influence the number of LES children identified. Los Angeles reported that when it changed from identifying LES/NES students by teacher judgment to using the state-approved assessment procedures, 30,000 fewer children were identified the first year.

> Teacher judgment identified about 100,000, but when we used the state-mandated language assessment procedures, only 70,000 were identified. That was quite startling, especially when we had projected a 10,000 student increase for that year (Rangel, 8/13/80).

In California, it is customary for bilingual classroom aides or people hired to do the language assessment to administer and score them. Thus, the pupils' classroom teachers are often not involved in the process of initial language assessment, but may be the final arbiters of a child's educational program based on his performance on a language proficiency assessment which they have not administered or scored.

In some districts, multiple methods of assessment are used. A California State Department of Education study noted the variability of

methods used to identify LES/NES students. All districts surveyed

> used the procedures outlined by the State to determine the number of LES/NES students in their district. These procedures involved: (1) an initial identification using a home language survey; and, (2) an assessment of English oral language using either the "Language Assessment Battery," "Language Assessment Scales," "Bilingual Syntax Measure," "Basic Inventory of Natural Language," or an alternative instrument used with state approval.
>
> Several districts expressed dissatisfaction with using a single instrument to identify the students who require a bilingual program. In many of these cases, the districts instituted additional procedures which augmented the existing State procedure. The most frequently used additional procedures were to evaluate students' performance as observed by a teacher and a standardized measure of achievement, to use the professional opinion of an ESL reading specialist, and to administer a diagnostic ESL test in order to place students in the school level ESL program (Evaluation Report of Consolidated Application Programs, 1978-79: Special Studies, Chapter III, p. 4).

Thus, within the identification methods prescribed by the State, local districts avail themselves of a variety of methods of assessing LES/NES children to receive bilingual education services.

The importance of this discretion at the local level is that the method of identification and language assessment employed may affect the number of children found to be present in various categories within a district and school. The number of children in a particular category (NES, LES, LAU categories A-E, proportion of LES/NES to FES children in a district, proportions of children speaking distinct languages, etc.) will influence whether or not a district meets the targeting requirement to provide bilingual education services of a particular type.

For example, if a district in Texas uses language assessment instrument x, which has a very high ceiling for students to qualify as limited or non-English speaking, fewer classes may identify 20 children of the same primary language, and thus, fewer "programs" of bilingual education will be established here. The children identified as limited or non-English proficient will still receive services in the form of an English Language Development Program, but this may not be taught by

a bilingual teacher.

Clearly, the local discretion can operate in either direction, and districts with great committment to bilingual education may use identification and language assessment methods which result in the identification of a larger number of children to receive services than might be identified by other methods. Teacher judgment can be a powerful force toward or against identification of LES/NES students to receive bilingual education services.

Instructional Programs

The greatest exercise of local discretion exists in the determination of the services offered to students once they have been identified as limited or non-English proficient. A "bilingual education program" may take many shapes. Certain broad program components are mandated in federal and state legislation, but tremendous local determination exists.

The Texas Education Agency requires the following components for all required bilingual education (K-3) and optional bilingual education (4-5) programs:

1) Basic concepts starting the student in the school environment are taught in the student's dominant language.

2) Language development is provided in the student's dominant language.

3) Language development is provided in the English language.

4) Subject matter and concepts aretaught in the student's dominant language.

5) Subject matter and concepts are taught in the English language.

6) Specific attention is given to instilling in the student a positive identity with his/her cultural heritage, self-assurance, and confidence (Texas State Plan for Bilingual Education, III. Instructional Programs, 7).

Each bilingual education program in the state is expected to follow the recently-developed curriculum guides (for bilingual education, K-5, and for English language development, 6-12). The guides provide a

linguistically and pedagogically sound scope and sequencing framework for developing bilingual education instructional programs. The TEA's position is that these documents represent the absolute minimum program acceptable. Local districts are encouraged to do more if theycan.

Although the greatest local discretion in the implementation of bilingual education exists in the establishment of curricula, one finds surprisingly similar pedagogical orientations in diverse Texas bilingual education programs. Because the state program concentrates on the primary grades, emphasis on the establishment of literacy in the home language is a hallmark of the state program. The philosophy espoused by people from the TEA Division of Bilingual Education, in Regional Service Centers, in district offices, principals, and teachers is that if children become literate in their home language first (by second or third grade, usually), then they must merely "transfer" the reading skill from one language to another. Thus, they do not attempt to simultaneously teach Spanish and English reading. Once children are up to a certain criterion in Spanish reading, they are taught the sound system of English, the syntactical contrasts between Spanish and English, and other elements which should facilitate "transfer" to English, which is usually made in several months during the third grade (if the child has been in a bilingual education program since Kindergarten).

This concept of language teaching was apparently universal in Texas schools and agencies visited. Its universality and the degree of clarity with which it was explained by classroom teachers, aides, and principals was striking evidence that although there is considerable local discretion in selecting curricula for bilingual education programs, the state appears to have wide sophistication and agreement among implementors of bilingual education programs about the linguistic basis for it.

The California Bilingual Education Services Guide requires instructional and support services in language development, reading, math, multicultural education, and staff development (Part II, 3-4). While the state's bilingual education legislation prescribed in great detail how students are to be identified and assessed, what qualifications their teachers must have, what proportion of students shall exist in classrooms, etc. almost no prescriptions regarding curriculum exist in California. Two languages are to be used for instruction, and until recently, the FES students were to be taught the other language, but no widely-held linguistic philosophy, other than the self-evident virtue of bilingualism, leaps out at one in California.

Texas' emphasis on establishing literacy in the home language and then transferring skills to English is not evident in California. In many classes, both languages are used simultaneously (or concurrently), for the same purposes, from kindergarten on. This may be necessary for the FES students in the bilingual education classes, but often results in inadvertent language mixing and a less-than-crystal clear pedagogic philosophy.

Possibly because of the greater diversity of the language groups served in California, the wider age spread of children served, the greater comprehensiveness of the legislation, different teacher-training requirements, and widely varying local capacity to implement bilingual education, one is hard-pressed to find many clearly articulated bilingual education programs in the state. A study done under contract to the California Legislative Analyst found a dearth of information on classroom practices (Evaluation of California's Educational Services to Limited and Non-English Speaking Students, IV, 49). Although the researchers tried to identify and examine different "models" of bilingual education in the state, they found that "models" did not remain discrete (89).

> Few interviewees could describe their 'approach' with sufficient details so they could be understood as forming an overall direction for the instruction (91).

When asked to describe their program, California bilingual education teachers frequently answer to the effect that, "We do whatever we have to to help the kids." In many districts, LES/NES children are not only poor, but are underachieving in many ways. A San Jose area resource teacher noted that in her school,

> Seventy-five percent of the kids achieve below the forty-sixth percentile. They quali y for Title I, are low achieving, need a variety of special services. The mean score on the Metropolitan Test for the kindergartners (about half of whom are LES/NES) was 18%.

With several language groups needing bilingual education services, high transiency, fluent English children composing 1/3 of the class, and teachers who are not often themselves of the cultural group served, it is no wonder that California lacks a consensual bilingual education curriculum.

The greater student diversity in California bilingual education programs decreases the likelihood that one may find an easily identifiable, precisely articulated instructional program. These factors

also make it less likely (than in Texas) that one will find an emphasis on literacy, in either language. These findings based on limited investigation of bilingual education programs in both states do not imply that programs in either state achieve better results; no attempt was made to seek representativeness, or to correlate curricula with outcomes. The observations are intended to raise issues about the exercise of discretion in the targeting, identification, and assessment of students to receive bilingual education services, and to explore the relationship between these criteria and the instructional programs offered.

Conclusion

The Lau Remedies of 1975 mandate certain kinds of minimal civil rights protection to language minority students. The Remedies target "programs" when 20 or more children of the same primary language are identified in a district; when there are fewer, the LES/NES children must be served with individual learning plans. Although racial or linguistic segregation is not acceptable under Lau, as long as racially or ethnically identifiable classes have not been created for the sole pupose of exclusion, they are acceptable if they serve a bona fide instructional purpose, and do not last all day.

ESEA Title VII, onthe other hand, is a voluntary competetive grant program. It does not set targeting criteria, other than maintaining that the children in greatest need should be served first. Ironically, however, Title VII allows up to 40% children "whose language is English in a bilingual education class funded by Title VII.

Title VII can be seen as an incentive and reward for local districts with high commitment to bilingual education. It takes local initiative to write a proposal which gets funded, and local commitment to provide staffing, encourage cooperative planning necessary to develop the plan described in the proposal, etc. Except for a small State role in the administration and monitoring of Title VII programs in the state, Title VII is essentially a federal-local linkage. Depending on whether the state's own bilingual education program is more or less prescriptive than Lau and Title VII, and along which dimensions, Title VII can be seen as "supporting" or "undermining" state efforts in bilingual education.

Where the state's program is more prescriptive than Lau, e.g. in California, Title VII is usually seen as supporting the state effort. Where a state's bilingual education program is not as strong as Lau, e.g. in Texas, local districts may have a disincentive to apply for

Title VII funds if they are already doing what is mandated under the less prescriptive (state) legislation. This leaves local districts which want to exceed the minimum state mandates applying for Title VII funds.

Both California and Texas have legislatively-mandated state bilingual education programs supported (to varying degrees) by state funds. California's program serves grades K-12 in 16 different languages, and includes 1/3 fluent Egnlish-proficient children (where possible) in each bilingual education class. Texas' program is mandatory only through grade 3, with an option to continue in grades 4 and 5, and uses Spanish almost exclusively.

Although the targeting criteria are quite different for the two states, student identification and language assessment procedures are very similar. Both employ a home language survey, followed up by language assessment of children who report a language other than English as their primary language. Considerable opportunity for local discretion exists in the determination of what educational "program" to offer LES/NES students. The degree of local commitment to bilingual education, and the nature of the program offered may influence local language assessment procedures. LEAs with high commitment and capacity to implement bilingual education programs may identify more students (using the same procedures) than a district with little commitment or capacity.

Districts with high proportions of LES/NES students, particularly over long periods of time, usually have great local commitment. They often have resources in the form of qualified teachers who are themselves of the same cultural and linguistic background as the children, funding for bilingual education, parent support, ethnic role models such as teachers, principals, and in Texas, even superintendents and board members. Such concentrations of committed people can be expected to favorably influence the educational program offerings. In California districts with high proportions of LES/NES students, the districts themselves often took leadership positions, developed policy statements and goals for their bilingual education programs, had curricula, with scope and sequencing activities for each grade level and language. Such district activity clearly exceeds the scope of the state mandate to provide bilingual education, but such detail work at the local level is necessary for establishment of quality educational programs. In districts which have not engaged in such groundwork, no articulated statement of program philosophy can be found and this lack of clarity about the purpose and methods of bilingual education is evident in the classroom.

In certain areas of Texas, school districts with student populations of over 80% LES/NES primary grade children are commonplace. Visiting such schools engenders the hypothesis that local districts with high concentrations of language minority students, cultural and linguistic role models in leadership positions, local commitment of resources, and well-trained teachers have high quality bilingual education programs - from a pedagogic standpoint, if not necessarily from a civil rights viewpoint. Such local conditions probably foster an environment where bilingual education would flourish regardless of federal or state mandates to provide it. This situation is aptly described by James Lehman of Eagle Pass.

> The concept of bilingual education in my particular community is a very, very natural process. It's a very wholesome one. Everyone in the community, irrespective of national origin, is bilingual. The entire business community is totally dependent upon its capability to be bilingual and to be able to draw from our proximity to Mexico. You know, the concept of bilingual education is practiced daily in our community (USA v. Texas, Defendants' Proposed Opinion, 12).

Within such communities of high concentrations of bilingual adults and LES/NES children, one finds two apparently contradictory phenomena in Texas. There are many Hispanic role models, people who have themselves experienced discrimination, been punished as children for speaking Spanish, and been denied equal opportunity and protection. These Hispanic role models often[9] use Spanish when talking to their students, even beyond the formal confines of a "bilingual education program." Due to the large number of Spanish-speaking adults in the Texas education system, there is considerable de facto bilingual education beyond the mandatory K-3 (optional 4 and 5) state program. The TEA policy on bilingual education appears to encourage establishment of literacy in the primary language, development of English, and allows maintenance of both languages at district option, either through formal or informal means, as a natural consequence of the state's demography.

Simultaneously, however, these bilingual professionals report that their own children are not fluent in Spanish. The children have reached the next stage of linguistic assimilation. Because they were not raised in an environment where Spanish was necessary for communication, they are not bilingual. As the noted linguist, Joshua Fishman stated,

> Socially patterned bilingualism can exist as a stabilized phenomenon <u>only</u> if there is functional <u>differentiation</u> between two languages rather than merely global dominance

> or balance. From the point of view of sociolinguistics, any society that produces functionally balanced bilinguals (i.e., bilinguals who use both their languages equally and equally well in all contexts) must soon cease to be bilingual because no society needs two languages for one and the same set of functions (Bilingualism in the Barrio, 560).

If the function of bilingual education is to assimilate children into the linguistic mainstream, the fact that the children of many bilingual Hispanics are monolingual English attests to the success of bilingual education as it has been practiced in Texas in the past. Since the current law has been in effect only since 1973, and the curriculum guides since 1978, these have not been responsible for the loss of the primary language among many Texas Hispanics. It will be interesting to observe over the long-run how current policies affect the linguistic patterns in the state. Because of continuous migration from Mexico, it is clear that Spanish will remain a viable language in Texas, but it will be interesting to see if children who begin their education in bilingual education programs maintain their primary language fluency.

The demographic and social patterns in California are more complicated than in Texas. Bilingual education as mandated and implemented lacks the clear goals and philosophy of the Texas program, and the students are not as concentrated as in to Texas, which reduces the cultural push toward program definition and language support. In California, intentions toward bilingual education are clearly "good." However, good intentions are not enough. Now that the federal and state civil rights protection mandates are being met in most districts throughout the state, the time has come to shift attention to the issue of educational programs provided. Clear educational goals based on sound pedagogy and understanding of linguistics might provide a needed clarity to the diverse programs across the state. This is not to argue for less diversity, but for greater conscious attention to the educational needs of the state's LES/NES children.

The ultimate irony of attempts to increase equal educational opportunity and protection under law for language minority children is that once they are identified as LES/NES and provided equal access, to what is it that they have been admitted? If the educational programs offered to them are not of high quality (as evidenced by a variety of educational, fiscal, and political measures), their civil rights have not been protected. Federal and state targeting, identification, and assessment criteria stop short of guaranteeing quality educational programs for language minority children, but perhaps this is the next area meriting attention.

Notes

[1]To preserve their anonymity, local informants are not identified and their districts remain similarly unidentifiable.

[2]To date, the most extensive effort to satisfy this mandate is a student placement system (which is the evolution of the "entry/exit criteria" issue) developed under contract to HEW by Southwest Educational Research Labs (SWERL) in Los Alamitos, Ca. The system is not regarded as the definitive solution to the problem of student identification and placement.

[3]The Texas state bilingual education program allots $25 per child to be used for materials (Tipton, 10/27/80). California allots an average of $150 per child based on a complicated impact aid formula. The total amount of state funds for bilingual education ($31 million in 1978-79) is equalled by the local expenditures (Evaluation of California's Services to Limited and Non-English Speaking Students, Fourth Interim Report, 102).

[4]The number fluctuates depending on attrition, temporary consultants, borrowing or lending staff to other SDE units, interns, etc., but hovers around 15.

[4a]This is evident by comparing the number of ESEA Title VII programs in California and Texas. California had 151 programs in 1979-80 while Texas had 56 (Directory, California Title VII Programs and TEA Division of Bilingual Education Directory of Title VII Programs).

[5]Lau Remedies mandate services to children who are limited or non-English proficient or are underachieving. This complicates matters tremendously, for children who are not necessarily limited English speaking because their home language is another one, but are limited in their use of language per se, and are underachieving, are eligible for special services under Lau. See Appendix A, Language Groups, Lau Categories, for a model Lau identification system.

[6]Another San Jose area elementary school visited had only one monolingual English class in the entire school, a combination third/fourth grade. The rest of the students were enrolled in Spanish/English or Protuguese/English bilingual programs.

[7]Los Angeles Unified School District spent about $1½ million to do federal and state mandated language assessment in 1979-80 (Rangel, 8/13/80).

[8]A study by the Office of the California Auditor General found that "schools use differing criteria to interpret test scores," and that most schools augment test scores with teacher judgment.

> Schools are also using different criteria to classify pupils' English language skills. Only two of five schools districts using the same testing instrument, for example, followed the proficiency levels prescribed in the instrument manual to classify and to place students. Of thethree school districts remaining, two were using a lower proficiency score than specified in the test manual. As a result, these schools were identifying fewer LES/NES students than indicated by the actual language assessment test results. Such deviation from the test manual produces substantial variation in the number of LES/NES pupils identified.(Implementation of Bilingual Education in California, 24-26).

[9]"Often" is a gross generalization. Many other Hispanics react to their early experiences of being punished for speaking Spanish by perpetuating that system with their own students, for, they claim, it forced them to learn English.

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Appendix D: Curriculum Framework for English Language Development 6-12. Austin, Texas: Texas Education Agency, April 1980.

United States of America, Plaintiff, Mexican American Legal Defense Fund, LULAC and G.I. Forum, plaintiff-intervenors, vs. State of Texas, et al., Defendants. Civil Action No. 5281 in the U.S. District Court for the Eastern District of Texas, Tyler Division.

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Tempes, Fred. Consultant, California State Department of Education, Office of Bilingual Bicultural Education. summer 1980 and 11/12/80 phone conversation.

Interviews, cont.

Tipton, Robert. Chief Consultant, Texas Education Agency, Division of Bilingual Education, Austin, Texas. 10/27/80.

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*The identities of local interviewees are not revealed to maintain their confidentiality. Four local districts were selected for investigation in each state (California and Texas). People interviewed at the local level include district directors of bilingual education, principals, resource teachers, classroom teachers, and aides. In each of the eight districts visited, at least half a day was spent in bilingual classes. Some schools were visited twice.

APPENDIX A

Language Groups: Lau Categories

LANGUAGE GROUPS:
LAU CATEGORIES

← E N G L I S H →

SPANISH	NONE	VERY LIMITED	LIMITED	NEAR FLUENT	FLUENT
	1	2	3	4	5
NONE 1	LEP Special Diagnosis Category C	LEP Special Diagnosis Category C	LEP Category D	NON-LEP If underachieving, Category E	NON-LEP Category E
2	LEP Special Diagnosis Category A	LEP Special Diagnosis Category C	LEP Category D	NON-LEP will be given remedial Category E	NON-LEP Category E
LIMITED 3	LEP Category A	LEP Category B	LEP Category C	NON-LEP instruction in areas of Category E	NON-LEP Category E
4	LEP Category A	LEP Category B	LEP Category B	NON-LEP underachievement: Category E	NON-LEP Category E
FLUENT 5	LEP Category A	LEP Category B	LEP Category B	NON-LEP These are Lau students. Category E	NON-LEP Category E

Category A = Monolingual Spanish
Category B = Predominant Spanish
Category C = Bilingual
Category D = Predominant English
Category E = Monolingual English

LEP = Limited English Proficiencies

NOTE 1: This matrix is prepared from information made available by the test maker, Language Assessment Scales, Linguametrics Group, Inc.

NOTE 2: Special Diagnosis will be recommended for students in cells 1-1, 2-2, 1-2, 2-1 using the Bicultural Test of Non-Verbal Reasoning and the Toronto Tests of Receptive Vocabulary. Consult Department of Special Education.

INSTRUCTIONS FOR LAU SERVICES CARD

1 Home Language Survey. One signed copy must be on file in permanent record file. Secondary students may fill out the survey if copy cannot be obtained from parent or guardian.

2 Needs Language Testing? Yes, if one or more answers to questions 1, 2, 3 are O = Other; No, if all three answers are E = English.

3 Language Testing. Both English and Spanish versions of the BSM or LAS tests must be given to establish a Lau category. Consult matrix on back of these instructions.

3a BTNVR and TTRV tests, given by Special Education Department, are recommended for
3b elementary students scoring 1-1, 2-2, 2-1, 1-2, on BSM or LAS tests.

4 Achievement. Underachievement is defined as scoring at the 39th percentile (national norm) or below on the total battery of the Comprehensive Test of Basic Skills (CTBS). Lau Campus Panels must consider all sub-tests and the total battery score in recommending an exit from Lau services.

5 Campus Panel Action. Campus Panel Chairperson signs the responses decided by Panel and indicates date of meeting.

5a Program Recommendation by Lau Campus Chairperson. Consult sheet entitled Possible Program Recommendations for students in Lau Categories A B C D E, including Underachievers available from administrative offices.

5b Consult Special Education personnel.

5c Entry Notice. The student's parents/guardian must be sent the district entry form (Spanish and English) regarding enrollment in a Lau program within 10 days of such enrollment. The form is available from the Administrative Offices.

Entry Criteria: Elementary and secondary levels.
a) Home Language Survey shows Other marked once.
b) Score of 1, 2, 3 on BSM or LAS tests, OR
c) Score of 4, 5 on LAS tests plus score on English CTBS total battery at 39th percentile or below (national norm).

5d Exit Notice. Any student at any grade level who has been approved to exit a Lau services program by a Lau Campus Panel must have a written notice to parents on file. Elementary and secondary exit forms are available from the Administrative Office.

Exit Criteria: All levels.
a) Score 4 or 5, post test basis, on English LAS (parts 4 and 5), and
b) Score above 39th percentile (national norm) of total battery, and
c) acceptable report card grades, and
d) teacher recommendation.

APPENDIX B

California Home Language Survey

Date _____ School _____

Teacher _____

HOME LANGUAGE SURVEY

The California Education Code requires schools to determine the language(s) spoken at home by each student. This information is essential in order for schools to provide meaningful instruction for all students.

Your cooperation in helping us meet this important requirement is requested. Please answer the following questions and have your son/daughter return this form to his/her teacher. Thank you for your help.

Name of student: _____ _____ _____
Last First Middle Grade Age

1. Which language did your son or daughter learn when he or she first began to talk? _____
2. What language does your son or daughter most frequently use at home? _____
3. What language do you use most frequently to speak to your son or daughter? _____
4. Name the language most often spoken by the adults at home: _____

_____
Signature of parent or guardian

State of California
Department of Education
OPER - LS 77 R - 6/78

APPENDIX C

Texas Home Language Survey

TEXAS STATE PARENTAL SURVEY OF
HOME LANGUAGE

Name of Child_____

School_____ Grade_____

TO BE FILLED OUT BY PARENT OR GUARDIAN:

a. Does your child hear a language other than English spoken at home?

Yes_____ No_____

If the answer to #1 is YES, please answer the following questions;

b. What is the other language(s) which your child hears?_____

c. Does your child hear this language spoken

(1) most of the time? _____

(2) some of the time? _____ (write YES in one space)

(3) not very often? _____

d. When this language is spoken, does your child understand

(1) most of what is said? _____

(2) some of what is said? _____

(3) very little of what is said? _____ (write YES in one space)

(4) nothing of what is said? _____

e. Does your child speak this other language?

Yes_____ No_____

_____
Signature of Parent or Guardian

_____
Date

APPENDIX D

Memo from Ernest Perez to Local Administrators listing state-approved language assessment instruments.

Texas Education Agency

201 East Eleventh Street
Austin, Texas
78701

• STATE BOARD OF EDUCATION
• STATE COMMISSIONER OF EDUCATION
• STATE DEPARTMENT OF EDUCATION

September 10, 1980

TO THE ADMINISTRATOR ADDRESSED:

The Texas State Plan for Bilingual Education, Page Two, lists approved language proficiency tests for use in the identification of children of limited English-speaking ability. These tests were originally selected by the Texas Education Agency on the recommendation of the Committee for the Evaluation of Language Assessment Instruments.

The State Plan lists the following approved tests and corresponding scores which indicate that a student is classified as LESA:

	Test	Grade Level	Score
a.	PAL, OLDM	K-3	lower than level 5 (for K only,
	OLPM	4-6	lower than level 4.5)
b.	BSM	K-2	lower than level 4
	BSM II	3-12	lower than level 5
c.	BINL	K-12	K-2: score lower than 50 3-8: score lower than 75 9-12: score lower than 100
d.	LAS, level 1	K-5	lower than level 4 (raw score lower than 75)
	level 2	6-12	lower than level 4 (raw score lower than 82)

e. SPLIT		Listening	Verbal Fluency
K-6	K: raw score lower than	10	6
	1: raw score lower than	14	7
	2: raw score lower than	15	9
	3: raw score lower than	15	9
	4: raw score lower than	16	9
	5: raw score lower than	17	9
	6: raw score lower than	17	9

If the student scores lower than the indicated scores on either the Listening Test or the Verbal Fluency Test of the SPLIT, the student is to be classified as LESA.

In addition, my letter of August 10, 1979, following a further recommendation of the committee, approved the following three tests:

Test	Grade Level	Scores which indicate a LESA student
Language Assessment Battery (Houghton Mifflin Company, 6626 Oakbrook Boulevard, Dallas, Texas 75235 (214) 631-5620)	Level I K-2	K: lower than 22 1: lower than 28 2: lower than 36
	Level II 3-6	3: lower than 56 4: lower than 67

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	Level III 7-12	5: lower than 77 6: lower than 79 7: lower than 67 8: lower than 72 9: lower than 77 10: lower than 77 11: lower than 79 12: lower than 80
Ilyin Oral Interview (Newbury House Publishers 54 Warehouse Lane Rowley, Massachusetts 01969 (617) 948-2794)	8-12	lower than 75
CELT (A Comprehensive English Language Test for Speakers of English as a Second Language) Listening, Form L-A (McGraw Hill Book Company, College Division 8301 Ambassador Row Dallas, Texas 75247 (214) 631-6998)	7-12	lower than 29

Finally, my letter of June 25, 1980, approved the following test, the committee's most recent recommendation:

Test	Grade Level	Scores which indicate a LESA student
IDEA Oral Language Proficiency Test (Ballard & Tighe, Inc. 7814 S. California Avenue Whittier, California 90602)	K-8	K & 1: level B or below (see p.10 of Examiner's Manual) 2 - 8: level C or below

Representative: Charles V. Ingram
6812 Colfax Drive
Dallas, Texas 75231
(214) 341-7357

Any questions regarding this matter may be referred either to me or to Dr. Lawrence Richard at (512) 475-4645.

Sincerely,

Ernest Pérez, Director
Division of Bilingual Education

EP:eh